

VESTED RIGHTS

§ 153.240 PURPOSE.

The purpose of this subchapter is to implement the provisions of G.S. § 160A-385.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan.

('72 Code, § 24-1800) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)

§ 153.241 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPROVAL AUTHORITY. The Town Board of Commissioners is authorized to grant the specific zoning approval that constitutes a site specific development plan.

PROPERTY OWNER. Any owner of a legal or equitable interest in real property, including the devisees, heirs, successors, assigns, and personal representative of that owner. The property owner may allow a person holding a valid option to purchase to act as his agent for purposes of submitting a proposed site specific development plan.

SITE SPECIFIC DEVELOPMENT PLAN.

(1) A plan of land development submitted to the town for purposes of obtaining a certificate of vested right. At a minimum, a site specific development plan must include the items listed below.

(a) A boundary survey showing the total acreage, present zoning classifications, date, and north arrow.

(b) The owners' names, addresses, and the tax parcel numbers of all adjoining properties.

(c) All existing easements, reservations, and rights-of-way and all yards required for the zoning district requested.

(d) Proposed use of structures and land. For residential uses, this should include the number of units and an outline of area where the structures will be located. For nonresidential uses, this should include the approximate square footage of all structures and an outline of the area where the structures will be located.

(e) Traffic, parking, and circulation plans, showing proposed locations and arrangement of parking spaces and access points to adjacent streets.

(2) Notwithstanding the foregoing, neither a variance, a sketch plan, nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

VESTED RIGHT. A right pursuant to G.S. §§ 160A-385.1 to undertake and complete the development and use of property under the conditions and terms of an approved site specific development plan, upon receipt of a certificate of vested right.

('72 Code, § 24-1801) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)

§ 153.242 CONCURRENT SUBMITTAL WITH CONDITIONAL DISTRICT ZONING REQUEST.

If the property owner so chooses, an application for vested right and fee (in accordance with a fee schedule adopted by the Town Commissioners) may be submitted concurrent with a zoning application for a conditional district rezoning. Upon the successful completion of a conditional district zoning request, which includes a public hearing, Planning Board review, and Town Commissioners final approval, then a certificate of vested right shall be issued.

('72 Code, § 24-1802) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)

§ 153.243 OBTAINING VESTED RIGHT INDEPENDENT OF ZONING APPLICATION.

To apply for a certificate of vested right, a property owner or his agent shall submit a site specific development plan, a fee (in accordance with a fee schedule adopted by the Town Commissioners) and an application for vested right on a form supplied by the town. The application and plan shall be accepted by the Town Commissioners and a hearing date shall be set. Following the hearing, the Commissioners may submit the application to the Planning Board for its recommendation. The Commissioners shall approve, approve with conditions, or deny the site specific development plan. Conditions shall be reasonable and appropriate and relate to the relationship of the proposed use to surrounding property, proposed support facilities, such as parking areas and driveways, pedestrian and vehicular circulation systems, buffer and screening areas, the timing of development, and other matters the Commissioners may deem necessary for public health or safety.

('72 Code, § 24-1803) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)

§ 153.244 ADDITIONAL SUBMISSION REQUIREMENTS.

The Town Board of Commissioners may request

additional information as they deem necessary in order to evaluate a proposed use and its relationship to the surrounding area. This information may include but is not limited to the items listed below.

(A) Proposed screening, including walls, fences, or planting areas, as well as treatment of any existing natural features

(B) Delineation of areas within the regulatory floodplain as shown on the official Flood Hazard Boundary Maps.

(C) Existing and proposed topography at four-foot contour intervals or less.

(D) Generalized information on the number, height, size, or location of structures.

(E) Proposed number, size, and location of signs.

(F) Proposed phasing, if any, and approximate completion time of the project.
(‘72 Code, § 24-1804) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)

§ 153.245 PUBLIC HEARING.

A public hearing date shall be set by the Town Board of Commissioners at the next regularly scheduled meeting which includes zoning matters, subject to sufficient time for advertisement. Notice shall be published in a newspaper having general circulation in the town area once a week, for two successive weeks, the first notice to be published not less than ten days nor more than 25 days prior to the date established for the public hearing. In addition, a notice of the public hearing shall be sent by certified mail by the applicant to all adjoining property owners. Certified mail return cards or returned notices shall be filed with the town by the date of the public hearing.
(‘72 Code, § 24-1805) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)

§ 153.246 CONSIDERATIONS FOR APPROVAL.

(A) In evaluating a site specific development plan for approval, the Town Board of Commissioners shall find the following:

(1) The policies and objectives of the Land Use Plan, particularly in relation to the proposed site and surrounding area shall be met.

(2) The potential adverse impacts on the surrounding area, especially in regard but not limited to traffic, storm drainage, land values, and compatibility of land

use activities shall be minimized to the greatest extent possible.

(3) The plan meets all specifications required by Chapter 153.

(4) The use will not materially endanger the public health or safety and will not substantially injure the value of adjoining property if located where proposed.

(B) The burden of proof of producing evidence to support these findings and to overcome challenges to them shall rest entirely with the property owner.
(‘72 Code, § 24-1806) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)

§ 153.247 APPROVAL OF SITE.

Upon approval of a site specific development plan, a statement shall be placed on the plan reading: “A vested right under G.S. § 160A-385.1 has been established for this property as shown on this site specific development plan, approved on _____, 19____. Unless terminated at an earlier date, the vested right shall remain valid until _____, 19____.”
(‘72 Code, § 24-1807) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)

§ 153.248 OTHER REVIEWS.

Following approval of a site specific development plan, nothing in this chapter shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that those reviews and approvals are not inconsistent with the original approval. The establishment of a vested right on a property shall not preclude the town from creating and approving one or more overlay districts which may impose additional restrictions on the property, provided that those restrictions do not affect the allowable type or intensity of use. The town may also enforce on the property any regulations adopted during the effective time period of the vested right, which are general in nature and applicable to all property subject to the regulations of this subchapter.
(‘72 Code, § 24-1808) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)

§ 153.249 DURATION.

A vested right shall be approved for a period of two years. It shall be effective immediately upon approval. Upon issuance of a building permit, the expiration provisions of G.S. § 160A-418 and the revocation provisions of G.S. § 160A-422 shall apply, except that a building permit shall not expire or be revoked due to the running of time while an

established vested right is outstanding.
(’72 Code, § 24-1809) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)

§ 153.250 TERMINATION.

A vested right may be terminated before the complete buildout of the approved site specific development plan in one of the following ways:

(A) At the end of the applicable vesting period with respect to buildings or uses for which no valid building permit applications have been filed;

(B) With the written consent of the affected property owner;

(C) Upon findings by the Town Commissioners, by ordinance after notice and public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;

(D) Upon payment to the affected property owner of compensation for all costs, expenses, and other losses incurred by the property owner, including fees paid in consideration of financing and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval of vested right, and interest at the legal rate until paid;

(E) Upon findings by the Town Commissioners, by ordinance after notice and a hearing, that the property owner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan;

(F) Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the Commissioners may modify the affected provisions, upon a finding, by ordinance after notice and a hearing, that the change in state or federal law has a fundamental effect on the plan.
(’72 Code, § 24-1810) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)

§ 153.251 VOLUNTARY ANNEXATION.

A petition for voluntary annexation for contiguous or satellite boundaries shall contain a signed statement declaring whether or not any vested right with respect to the properties subject to the petition has been established. A statement

declaring that no vested right has been established, or the failure to sign a statement declaring an established vested right, shall be binding on the property owner and any undeclared vested right shall be terminated.

(’72 Code, § 24-1811) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)

§ 153.252 REPEALER

In the event that G.S. § 160A-385.1 is repealed, this subchapter shall be deemed repealed and the provisions within no longer effective.

(’72 Code, § 24-1812) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91)